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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of

Amendment of Section 73.606(b),
Table of Allotments,
TV Broadcast Stations.
(Elk City, Oklahoma and
Borger, Texas)

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MM Docket No. 01-134
RM-10137

NOTICE OF PROPOSED RULE MAKING

Adopted: June 13, 2001

Released: June 22, 2001

Comment Date: August 13, 2001

Reply Date: August 28, 2001

By the Chief, Allocations Branch

1. Before the Commission for consideration is a Petition for Rule Making filed on behalf of TV 31, L.L.C. ("TV 31"), permittee for Station KBCA, NTSC Channel 31, Elk City, Oklahoma, proposing the reallocation of Television Channel 31 from Elk City, Oklahoma, to Borger, Texas, as that community's first local television service.¹ TV 31 also requests modification of its construction permit for Station KBCA, Elk City, to be modified to specify operation at Borger. TV 31 indicated that it would file an application for Channel 31 at Borger if the channel is allotted to the community as requested.

2. TV 31 filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O") 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, TV 31 states that the requested reallocation of Channel 31 to Borger is mutually exclusive with the current allotment of Channel 31 at Elk City. TV 31 states that its proposal would result in a preferential arrangement of allotments as Borger will be provided with its first local television service while Elk City will retain the allotment of noncommercial educational television Channel *15.² See Johnstown and Jeannette, Pennsylvania, 12 FCC Rcd 10300 (1997). In

¹ There is no paired DTV channel for Channel 31 at Elk City.

² In evaluating television reallocation proposals, we apply the television allotment priorities set forth in the Sixth Report and Order on Television Allocations, 41 FCC 148, 167 (1952). Those priorities are: (1) provide at least one

further support of its request, TV 31 states that Borger satisfies the Commission's definition of a community for allotment purposes. Borger had a population of 15,675 people according to the 1990 U.S. Census, has a mayor/city council form of government with its own post office and zip codes (79007 and 79008). TV 31 states that Borger has its own police and fire departments, a hospital, public library, local newspaper (the Borger News Herald), and its own public school district, the Borger Independent School District. Borger has its own Chamber of Commerce, numerous churches, Rotary Club, Lions Club and the United Way. According to TV 31, Borger was designated as a Primary Business Center by Rand McNally in 1995 and has many businesses which include Phillips Petroleum Company, Borger ISD, Golden Plains Community Hospital, Wal-Mart and K-Mart.

3. In support of the proposal, TV 31 states that the reallocation of Channel 31 to Borger will provide a first television service ("white area") to 10,268 people within a 3,772 square kilometer area and a second television service ("gray area") to 5,601 people in a 4,791 square kilometer area. The reallocation to Borger falls under priority 1 (provide at least one television service to all parts of the United States) and priority 2 (provide each community with at least one television broadcast station). A first local service will be provided to the larger community of Borger (15,675 population vs. 10,428 for Elk City). TV 31 states that deletion of Channel 31 at Elk City will result in a net loss of Grade B service to 74,223 people within a 15,880 square kilometer area while the reallocation to Borger will provide a net gain in new Grade B service to 77,402 people in a 20,056 square kilometer area, resulting in a net Grade B service gain of 3,179 people in a 4,176 square kilometer area. TV 31 contends that the reallocation to Borger is clearly preferred over retaining Channel 31 at Elk City citing Littlefield, Wolfforth and Tahoka, TX, 12 FCC Rcd 3216,3220 (1997).

4. According to a staff engineering study, the loss area of NTSC Television Channel 31 at Elk City contains 70,912 people and covers 15,704 square kilometers while the gain area of Channel 31 at Borger contains 78,569 people and covers 19,939 square kilometers. This will produce a net gain of 7,657 people in 4,235 square kilometers. Further, the loss area for Elk City contains 39 people in 33 square kilometers in a white area and 59,231 people in 14,400 square kilometers in a gray area. Our study further shows that the gain area of Channel 31 at Borger also has sections of both white and gray areas. The white area contains 9,204 people in 3,375 square kilometers and the gray area contains 5,748 people in 4,576 square kilometers. Additionally, the 80 dBu contour for Channel 31 does not cover an urbanized area from either community. Channel 31 can be allotted to Borger at the proposed site in compliance with the minimum distance separation requirements of Section 73.610(b)(2) of the Commission's Rules.³

television service to all parts of the United States; (2) provide each community with at least one television broadcast station; (3) provide a choice of at least two television services to all parts of the United States; (4) provide each community with at least two television broadcast stations; and (5) assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities.

³ The coordinates for Channel 31 at Borger, Texas, are 35-41-56 and 100-53-34. The station will be operating with 5000kw ERP and 300 meters HAAT at this site.

5. We believe the public interest would be served by soliciting comments on TV 31's proposal to reallocate Channel 31 from Elk City, Oklahoma, to Borger, Texas. Since the Channel 31 facility is not built, the reallocation does not represent a loss of service from Elk City upon which the public has come to rely. The proposal, if adopted, could provide the community of Borger with its first local television service while Elk City will retain the allotment of Channel *15. Therefore, we are proposing to reallocate NTSC Channel 31 from Elk City, Oklahoma, to Borger, Texas, and modify the authorization of TV 31, L.L.C. to specify Borger, Texas, as its community of license.

6. Accordingly, we seek comments on the proposed amendment to the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, with respect to the communities listed below, as follows:

| Community | Channel No. | |
|--------------------|-------------|----------|
| | Present | Proposed |
| Elk City, Oklahoma | *15-, 31 | *15- |
| Borger, Texas | ----- | 31 |

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before August 13, 2001, and reply comments on or before August 28, 2001, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Mark N. Lipp
Scott C. Cinnamon
Shook, Hardy & Bacon
600 14th Street, N.W., Suite 800
Washington, D. C. 20005

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

Comments should be filed with the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 445 Twelfth Street, S.W., Washington, D. C.